Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Frommer | Analyst: Jeff Garnier | Bill Number: AB 1297

Related Bills: See Prior Analysis | Telephone: 845-5322 | Amended Date: Aug. 17 & 23, 2004

Attorney: Patrick Kusiak | Sponsor: ____

SUBJECT: Prohibit Tax Shelters from Being an Insurable Risk

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ____________.

_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended ____________.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO ____________.

__x__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 6, 2004, STILL APPLIES.

__X__ OTHER - See comments below.

SUMMARY

This bill would:

- Prohibit insurance companies from insuring an abusive tax shelter.
- Create a penalty, imposed on the taxpayer, equal to 75% of the proceeds received from insurance relating to an abusive tax shelter.

SUMMARY OF AMENDMENTS

The August 17, 2004, amendments clarified that if an insurance policy covers risks in addition to an abusive tax avoidance transaction (ATAT), the portion of the policy related to non-ATAT shall remain in effect. Additionally, the amendments clarify the portion of premiums to be returned to the policyholder and the 75% penalty shall only be assessed on proceeds that relate to an ATAT. The amendments also specified that the Insurance Code provision of the bill that would void insurance on an ATAT apply to policies issued, amended, or renewed on or after September 1, 2004.

The August 23, 2004, amendments provide that an insurance policy would not be voided if the transaction became a "listed transaction" after the issuance or amendment of the insurance policy. The amendments also provide that the 75% penalty would not apply to proceeds of insurance policies issued, renewed, or amended prior to September 1, 2004, or after September 1, 2004, if the taxpayer participated in the voluntary compliance initiative (VCI) that ended April 15, 2004.

Board Position:			Legislative Director	Date
____ S	____ NA	__X__ NP		
____ SA	____ O	____ NAR	Jana Howard for Brian Putler	8/31/04
____ N	____ OUA	____ PENDING		

The remainder of the analysis of the bill as amended July 6, 2004, still applies. For convenience, the THIS BILL section of the analysis, updated with the above amendments, is being presented in this analysis.

EFFECTIVE/OPERATIVE DATE

The bill would be effective January 1, 2005. The prohibition on insuring an ATAT would apply to policies issued, amended, or renewed on or after September 1, 2004. The penalty would apply to proceeds received from an insurance policy issued, amended, or renewed after September 1, 2004, and proceeds for an ATAT received by a taxpayer that did not participate in the VCI for the ATAT.

POSITION

No position.

ANALYSIS

THIS BILL

Under the Insurance Code, this bill would make any insurance policy (or part thereof) issued for an ATAT or a listed transaction against public policy null and void. Any premiums received by the insurance company relating to ATAT coverage would be required to be returned to the policyholder.

The bill defines an ATAT and a listed transaction by reference to the Revenue and Taxation Code (R&TC). The R&TC defines an abusive tax avoidance transaction as a plan or arrangement devised for the principal purpose of avoiding tax.

Listed transactions are defined as transactions substantially similar to transactions that either the Franchise Tax Board or the Internal Revenue Service have determined to be a tax avoidance transaction. The R&TC contains various rules and procedures regarding the administration of listed transactions. This bill provides that if the insurance policy originated prior to the date the transaction became a listed transaction, the policy will remain in effect.

The prohibition on issuing insurance for ATATs would not apply to persons that do not have an economic interest in the transaction. An investor, promoter, organizer, or any person required to register the transaction under the R&TC is considered to have an economic interest in the transaction.

Under the R&TC, this bill would create a penalty equal to 75% of the proceeds received from insurance policies that insure a risk relating to an investment in an ATAT. An ATAT is defined as a plan or arrangement devised for the principal purpose of avoiding tax.

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